

**UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT**

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**2011-1009**

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**FILED**  
U.S. COURT OF APPEALS FOR  
THE FEDERAL CIRCUIT

JAN 14 2011

**SOVERAIN SOFTWARE LLC,**

JAN HORBALY  
CLERK

Plaintiff-Appellee

**RECEIVED**

v.

**NEWEGG INC.,**

JAN 14 2011

United States Court of Appeals  
For The Federal Circuit

Defendant-Appellant

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Appeal from the United States District Court for the Eastern  
District of Texas in Case No. 07-CV-0511, Judge Leonard Davis.

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**SOVERAIN SOFTWARE LLC'S SUPPLEMENTAL MOTION  
TO EXTEND TIME TO FILE APPELLEE'S BRIEF**

Pursuant to Federal Rule of Appellate Procedure 27 and Federal Circuit Rule 26(b), Plaintiff-Appellee Soverain Software LLC ("Soverain") respectfully requests a ninety (90) day extension of time to file Appellee's Brief (or "Red Brief") in opposition to Newegg Inc.'s ("Newegg") pending appeal in the event that the Court grants Jones Day pending Motion to Withdraw.

On November 19, 2010, Soverain's counsel, Jones Day, filed a still pending Motion to Withdraw from its representation of Soverain on this appeal. Soverain

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opposed the motion and concurrently moved for an extension providing Jones Day at least 60 days from the date of ruling to prepare and file Soverain's Appellee Brief. In the alternative, Soverain requested a stay of the appeal to permit Jones Day and Soverain to resolve their dispute in accordance with a written agreement setting forth the applicable dispute resolution process.

To date, the Court has not ruled on the foregoing pending motions. In its prior filing, Soverain indicated that it may need to request an extension if the Court did not deny Jones Day's Motion to Withdraw. (Dec. 9, 2010, Opposition to Motion to Withdraw at 9, n3.) Because the Court has not yet ruled, and to formally address the possibility that the Court might grant Jones Day's motion, Soverain now requests such an extension.

Due to the pending dispute relating to Jones Day's Motion to Withdraw, Jones Day ceased working on this matter. (Supplemental Declaration of Katharine Wolanyk, ¶ 4, attached hereto as **Exhibit A**.) Since that time, Soverain has acted to proceed with the dispute resolution process called for by the terms of the Engagement Agreement, and to otherwise preserve its right to appeal with Jones Day as its counsel. *Id.*, ¶¶ 5-6. Due to its involvement in the Newegg litigation, Jones Day remains uniquely positioned to represent Soverain's interests in this appeal. If the Court grants Jones Day's motion, however, Soverain requires an extension of ninety (90) days in order to permit Soverain time so that substitute

counsel will have sufficient time become familiar with the voluminous record in the case and prepare Soverain's Appellee Brief.

The Court's disposition of Jones Day's Motion to Withdraw substantially affects the manner in which Soverain can proceed in preparing the filing of its Appellee Brief. Until the Court rules on this pending motion, Soverain cannot proceed effectively to preserve its rights relating to the pending appeal.

Soverain's Appellee Brief is currently due on January 20, 2011. Soverain requests that the Court enter an order that extends this deadline ninety (90) days from the date of the Court's ruling, in the event the Court decides to grant Jones Day's pending Motion to Withdraw. The Court has not yet granted Soverain an extension to the date for filing the Appellee Brief.

Soverain has conferred with counsel for Appellant and determined that Newegg opposes this motion and plans to file a response in opposition.

For the foregoing reasons, Soverain Software LLC respectfully requests that its motion for an extension of time be granted if the Court grants Jones Day's Motion to Withdraw.

Dated: January 13, 2011

Respectfully submitted,

By:   
*Counsel for Plaintiff-Appellee*  
*Soverain Software LLC*

Peter C. John  
Eric R. Lifvendahl  
Paul J. Ripp  
Williams Montgomery & John Ltd.  
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Chicago, IL 60606  
(312) 443-3200 (phone)  
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UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

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2011-1009

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SOVERAIN SOFTWARE LLC,

Plaintiff-Appellee,

v.

NEWEGG INC.,

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**Soverain Software LLC's Supplemental Motion  
to Extend Time to File Appellee's Brief**

**EXHIBIT A**

Soverain Software v. Newegg, 2011-1009

**Supplemental Declaration Of Katharine Wolanyk in Support of  
Supplemental Motion To Extend Time**

I, Katharine A. Wolanyk, declare:

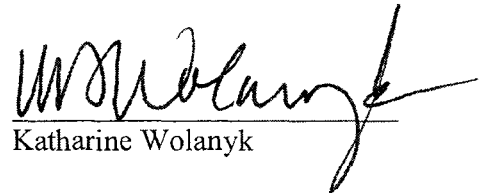
1. I am the President and Chief Legal Officer of Soverain Software LLC ("Soverain"). I submit this declaration in connection with Soverain Software LLC's Supplemental Motion to Extend Time to File Appellee's Brief ("Supplemental Motion to Extend") in the above captioned matter. I am fully familiar with the facts set forth herein, and could competently testify to them if called upon to do so.
2. I have held the position of President and Chief Legal Officer of Soverain since June 1, 2003. Since then, I have been involved in the litigation that gave raise to this appeal in the matter entitled *Soverain Software LLC v. CDW Corporation, Newegg Inc., Redcats USA, Inc, Systemax Inc., The Sportsman's Guide, Inc., and Tigerdirect, Inc.*, Case No. 6:07-cv-00511-LED, filed in the United States District Court for the Eastern District of Texas, Tyler Division ("Newegg Litigation").
3. A final judgment was entered in the Newegg Litigation on August 11, 2010. (Dkt. #435.) Newegg Inc. filed its notice of appeal on September 10, 2010 (Dkt. #445) and amended its notice of appeal on October 5, 2010. (Dkt. #449.) Newegg Inc. filed its appellate brief on December 7, 2010 and Soverain's Appellee Brief is currently due January 20, 2010.
4. Soverain's counsel, Jones Day, filed a Motion to Withdraw as Counsel which Soverain opposes. As a result of Jones Day's and Soverain's dispute, Jones Day has ceased work on this matter and has not started preparing for Soverain's Appellee Brief.
5. Soverain and Jones Day are currently engaged in negotiations and taking steps to resolve their dispute in accordance with the dispute resolution process set forth in a written Engagement Agreement governing Jones Day's representation of Soverain in the Newegg Litigation.
6. Soverain has retained Williams Montgomery & John Ltd. for the limited purpose of preserving Soverain's right to appeal with Jones Day as its counsel and to represent Soverain in the dispute resolution process.

Soverain Software v. Newegg, 2011-1009

**Supplemental Declaration Of Katharine Wolanyk in Support of  
Supplemental Motion To Extend Time**

7. Soverain's Supplemental Motion to Extend requests that Soverain be granted an extension of time to file the Appellee Brief for 90 days if the Court grants Jones Day's pending Motion to Withdraw. Soverain maintains that, due to its involvement in the Newegg litigation, Jones Day remains uniquely positioned to represent its interests on this appeal. However, Soverain requests an extension in the event the Court grants Jones Day's motion so that substitute counsel will have sufficient time to become familiar with the voluminous record at issue.
8. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed in Chicago, Illinois, on January 13, 2011.

  
Katharine Wolanyk

**UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT**

2011-1009

Soverain Software LLC,

Plaintiff-Appellee,

v.

Newegg Inc.,

Defendant-Appellant,

Appeal from the United States District Court for the Eastern District of Texas in  
Case No. 07-CV-0511, Judge Leonard Davis.

**CERTIFICATE OF INTEREST**

In compliance with Federal Circuit Rules 27(a)(7) and 47.4(b), the undersigned  
counsel for Plaintiff-Appellee Soverain Software LLC, certifies the following:

1. The full name and every party or amicus represented by me is:  
SOVERAIN SOFTWARE LLC.
2. The name of the real party in interest (if the party named in the  
caption is not the real party in interest) represented by me is: NONE.
3. All parent corporations and any publicly held companies that own 10  
percent or more of the stock of the party or amicus curiae represented by me are:  
NONE.



Soverain Software v. Newegg, 2011-1009

**CERTIFICATE OF INTEREST (Continued)**

4. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court are:

**Jones Day:** Kenneth R. Adamo, Thomas Demitrack, Thomas L. Giannetti, Mark C. Howland, George T. Manning, Barry R. Satine, Jennifer Seraphine, Ognian V. Shentov, Andrey Belenky, Kenneth Canfield, Clark Craddock, Lynda Q. Nguyen, Debra R. Smith, Stela C. Tipi.

**The Roth Law Firm:** Carl R. Roth, Amanda Aline Abraham;

**Siebman Burg Phillips & Smith:** Michael C. Smith

**Williams Montgomery & John:** Peter C. John, Eric R. Lifvendahl, Paul J. Ripp

1-13-2011  
Date

Paul J. Ripp  
Signature of Counsel

Paul J. Ripp  
Printed Name of Counsel

**CERTIFICATE OF SERVICE**

I, Paul J. Ripp, hereby certify that on the January 13, 2011, I caused the:

1. **Soverain Software LLC's Supplemental Motion to Extend Time to File Appellee's Brief (and Exhibit A attached thereto)**
2. **Certificate of Interest**

to be served as follows:

One copy by facsimile and the original and four copies (and a pre-paid return envelope) by Federal Express to:

Clerk of Court  
United States Court of Appeals for the Federal Circuit  
717 Madison Place, NW  
Washington, DC 20439  
Facsimile: 202-275-9678

One copy by facsimile and two copies by Federal Express to each of:

Kent E. Baldauf, Jr.  
Daniel Harris Brean  
David C. Hanson  
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700 Koppers Building  
436 Seventh Avenue  
Pittsburgh, PA 15219  
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Houston, TX 77010  
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New York, NY 10166  
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Paul J. Ripp

**WILLIAMS MONTGOMERY & JOHN** LTD  
A FIRM OF TRIAL LAWYERS

**Paul J. Ripp**  
(312) 443-3205  
Fax: (312) 630-8505  
pjr@willmont.com

January 13, 2011

**RECEIVED**

**VIA OVERNIGHT MAIL**

Mr. Jan Horbaly  
Clerk of Court  
United States Court of Appeals for the Federal Circuit  
717 Madison Place, N.W., Room 401  
Washington D. C. 20439

United States Court of Appeals  
For The Federal Circuit

Re: ***Soverain Software, LLC v. Newegg Inc.***, Case No. 2011-1009  
Appeal from the United States District Court for the Eastern District of Texas  
in Case No. 07-CV-0511, Judge Leonard Davis

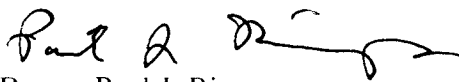
Dear Mr. Horbaly:

Please find enclosed for filing the original and three copies of the Soverain Software LLC's ("Soverain") Supplemental Motion to Extend Time to File Appellee's Brief in the above referenced matter. A copy of the original was also transmitted to the Federal Circuit Court of Appeals, by facsimile to 202-275-9678, on January 13, 2011, pursuant to Federal Circuit Rule 25.

This overnight filing includes an extra copy of the foregoing document. Please mark this copy received and filed, and return it in the self addressed return envelope provided.

Very truly yours,

WILLIAMS MONTGOMERY & JOHN

  
By: Paul J. Ripp

Enclosure

cc: Counsel of record (as listed on certificate of service)

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